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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIFTH APPELLATE DISTRICT**

K.N.,

Petitioner,

v.

THE SUPERIOR COURT OF KERN
COUNTY,

Respondent;

THE PEOPLE,

Real Party in Interest.

F079208

(Kern Super. Ct. No. JW107389-05)

OPINION

APPEAL from an order of the Superior Court of Kern County. Lorna H.
Brumfield, Judge.

Richard R. Rivera for Defendant and Appellant.

No appearance for Respondent.

Cynthia Zimmer, District Attorney, David L. Wilson and Terrance C. McMahan,
Deputy District Attorneys, for Real Party in Interest.

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SEE CONCURRING AND DISSENTING OPINION

On May 6, 2019, petitioner filed a “Petition for Extraordinary Writ,” challenging the superior court’s March 27, 2019, ruling finding Senate Bill No. 1391 (2017-2018 Reg. Sess.) (Sen. Bill No. 1391) unconstitutional, denying her motion to dismiss the juvenile court transfer motion, and setting the matter for a transfer hearing, pursuant to this court’s May 2, 2018, nonpublished decision on remand in case No. F066160 (*People v. Nash et al.* (May 2, 2018, F066160) [nonpub. opn.]). This court immediately deemed the petition a “Petition for Writ of Mandate,” stayed further proceedings, and ordered informal responses.

This court subsequently upheld Sen. Bill No. 1391 as constitutional and found that under the legislation, the juvenile court now lacks authority to transfer minors aged 14 and 15 to criminal court. (*People v. Superior Court (T.D.)* (2019) 38 Cal.App.5th 360, review granted Nov. 26, 2019, S257980 (*T.D.*); *People v. Superior Court (I.R.)* (2019) 38 Cal.App.5th 383, review granted Nov. 26, 2019, S257773 (*I.R.*); see also *People v. Superior Court (Alexander C.)* (2019) 34 Cal.App.5th 994 (*Alexander C.*); *People v. Superior Court (K.L.)* (2019) 36 Cal.App.5th 529 (*K.L.*).)

On September 20, 2019, after the above referenced decisions became final, this court lifted the stay of further proceedings and issued an alternative writ directing the superior court to either:

- “(a) Vacate its March 27, 2019, rulings (1) finding [Sen. Bill No.] 1391 unconstitutional, (2) denying the motion to dismiss the District Attorney’s juvenile court transfer motion, and (3) setting a juvenile transfer hearing, or
- “(b) Show cause before this court why the requested relief should not issue.”

This court expressly directed respondent court to inform this court of its decision by October 15, 2019.

On October 15, 2019, respondent court filed a “Request for Extension of Time re: Decision to Vacate its March 27, 2019 Ruling or Show Cause Before the Court.” The

request, signed by the juvenile court officer who issued the rulings challenged by petitioner, expressly sought “a two-week extension of the time for this court to inform the 5th District Court of Appeals [*sic*] of its decision.” The Presiding Justice of this court granted the request for extension of time to respond through October 29, 2019.

Despite the request for extension of time, respondent court failed to timely comply with the express terms of the alternative writ by either performing the requested action or showing cause before this court why the requested relief should not issue. Indeed, respondent court declined to respond at all to the alternative writ, other than to send word through court staff that no response was forthcoming.

As of November 4, 2019, this court remained unaware of: (1) respondent court’s intentions, (2) whether petitioner’s case remained pending before the juvenile court or adult court, and (3) whether petitioner was in custody in juvenile hall, county jail, or prison. This court therefore directed respondent court, petitioner, and the People to each file concurrent responses with this court, no later than 4:30 p.m. on Tuesday, November 12, 2019, setting forth the status of petitioner’s case and recommending whether further action was required to resolve the issues raised in the petition. This court subsequently granted requests from the People and petitioner for extensions of time through November 18, 2019, and November 22, 2019, respectively. This court also advised the parties it was considering granting relief without further proceedings. (*Palma v. U.S. Industrial Fasteners, Inc.* (1984) 36 Cal.3d 171, 180.)

The People timely responded and set forth the procedural history of this case, but did not mention the status of petitioner’s case or custody. The People argued that because the constitutionality of Sen. Bill No. 1391 is now in conflict among the appellate districts (see *O.G. v. Superior Court* (2019) 40 Cal.App.5th 626, review granted Nov. 26, 2019, S259011 (*O.G.*)), that this court should stay the proceedings below “until final disposition of the matter by the California Supreme Court.”

Petitioner, meanwhile, “objects to Real Party’s request that the orders contained in this court’s alternative writ be held in abeyance pending some future ruling by the California Supreme Court in another case from another appellate district.” She “contends that she is being prejudiced by the delay in adjudicating her juvenile court delinquency petition and obtaining the rehabilitative programs available” for juvenile offenders. Petitioner protests that she is still imprisoned at the Central California Women’s Facility, despite this court previously conditionally reversing her murder conviction in case No. F066160. Petitioner renews her request that this court order respondent court to vacate its March 27, 2019, rulings and further asks this court to order respondent court to set a dispositional hearing in her underlying juvenile court action.

Meanwhile, on November 8, 2019, respondent filed with this court a “response,” signed by the juvenile court officer, stating in its entirety:

“The Respondent Court has read the Order from the Court of Appeal dated November 4, 2019. The Respondent Court will not be filing a response to the ruling on the Petitioner’s “Petition for Extraordinary Writ” that the Court of Appeal deemed a Petition for Writ of Mandate.”

Code of Civil Procedure section 1085, subdivision (a) establishes that “A writ of mandate may be issued by any court to an inferior tribunal” Under Code of Civil Procedure section 1087, such relief may be in the form of an alternative writ, which “must command the party to whom it is directed immediately after the receipt of the writ, or at some other specific time, to do the act required to be performed, or to show cause before the court at a time and place then or thereafter specified by court order why he has not done so.”

This court issued an alternative writ on September 20, 2019, and effectively reissued it on November 4, 2019, yet twice respondent court affirmatively elected not to comply. Respondent court therefore not only violated the procedures under Code of Civil Procedure section 1087, but also violated two direct orders issued by this court. (See *Hampton v. Superior Court* (1952) 38 Cal.2d 652, 656 [“A trial court may not exceed the

specific directions of a court of review ... and add thereto conditions which it assumes the reviewing court should have included.”]; *Butler v. Superior Court* (2002) 104 Cal.App.4th 979, 982 [“When an appellate court’s reversal is accompanied by directions requiring specific proceedings on remand, those directions are binding on the trial court and *must* be followed.”].)

In light of respondent court’s failure to comply with the alternative writ and for the reasons set forth in *T.D.*, *supra*, 38 Cal.App.5th 360, *I.R.*, *supra*, 38 Cal.App.5th 383, *Alexander C.*, *supra*, 34 Cal.App.5th 994, and *K.L.*, *supra*, 36 Cal.App.5th 529 demonstrating petitioner is entitled to appropriate relief, the May 6, 2019, Petition for Writ of Extraordinary Relief, which this court deemed a Petition for Writ of Mandate, is granted.¹

DISPOSITION

Let a peremptory writ of mandate issue directing the Kern County Superior Court to vacate its March 27, 2019, rulings and to set a dispositional hearing in petitioner’s underlying juvenile court action. Respondent court is further ordered to cause a copy of petitioner’s juvenile court disposition to be filed with this court within five days of the dispositional hearing.

Given the respondent court’s obligation and failure to adhere to Code of Civil Procedure section 1087 and appellate directions, a copy of this decision shall be forwarded to the Presiding Judge of the Kern County Superior Court.

DETJEN, J.

I CONCUR:

PEÑA, J.

¹ While we acknowledge the Supreme Court recently granted review in *T.D.*, *I.R.* and *O.G.*, it did not order them depublished. (See Cal. Rules of Court, rule 8.1115(e)(1).)

Poochigian, Acting P.J., concurring and dissenting.

For the reasons stated in my dissents in *People v. Superior Court (T.D.)* (2019) 38 Cal.App.5th 360, review granted Nov. 26, 2019, S257980 and *People v. Superior Court (I.R.)* (2019) 38 Cal.App.5th 383, review granted Nov. 26, 2019, S257773, I disagree with my colleagues that Sen. Bill No. 1391 is constitutional and that petitioner must be adjudged by the juvenile court. If the respondent court had relied on opinions of other appellate districts finding Sen. Bill No. 1391 unconstitutional, it should have so advised this court. I therefore join the panel in concluding respondent court failed to adhere to its duty to follow appellate orders of this court.

POOCHIGIAN, Acting P.J.